

**Title 15. CRIME PREVENTION AND CORRECTIONS**  
**Division 2. BOARD OF PAROLE HEARINGS**  
**(formerly known as Board of Prison Terms)**  
**Chapter 5. PAROLE SUPERVISION**  
**Article 1. LENGTH AND CONDITIONS OF PAROLE**  
**Sections 2510, 2511, 2512 and 2513**

**INITIAL STATEMENT OF REASONS**  
**RN 07-06**

**CIRCUMSTANCES THAT THESE REGULATORY AMENDMENTS ARE INTENDED TO ADDRESS**

Government Code § 12838.4 vests the Board of Parole Hearings with all the powers, duties, responsibilities, obligations, liabilities, and jurisdiction of the Board of Prison Terms, Narcotic Addict Evaluation Authority, and Youthful Offender Parole Board, which no longer exist.

Penal Code § 3052 vests with the Board the authority to establish and enforce rules and regulations under which prisoners committed to state prisons may be allowed to go upon parole outside of prison when eligible for parole.

Penal Code § 5076.2 authorizes the Board to promulgate, maintain, publish, and make available to the general public a compendium of its rules and regulations.

The federal courts in *Armstrong v. Schwarzenegger (Armstrong II)*, United States District Court, Northern District of California, Case No. C94-2307 CW, and *Valdivia v. Schwarzenegger*, United States District Court, Eastern District of California, Case No. CIV S94-0671 LKK GGH issued orders that the Board develop and implement policies and procedures that accommodate and effectively communicate with prisoners and parolees with disabilities at all parole proceedings, including parole revocation proceedings. Notice of the conditions of parole is the first step in the parole process that might lead to parole revocation proceedings. This regulatory action is necessary to amend the regulations of the Board in order to comply with the *Armstrong* and *Valdivia* orders requiring use of effective communication in parole proceedings including revocation. It is also necessary to amend the regulations in order to give notice to certain inmates and parolees of Jessica's Law requirements.

Nearly all of the changes presented by the current action have already been approved by the Board in August 2006. The thrust of the 2006 emergency regulation package was to implement those portions of the *Armstrong* and *Valdivia* court orders that required review of parole process and reform to make the regulations easily understandable to the directly affected public—prisoners and parolees who might have a disability, including a learning disability. Later, on November 7, 2006, voters passed Proposition 83 (Jessica's Law). This new law places additional restrictions on parolees convicted of certain sex offenses.

## **NECESSITY FOR THE PROPOSED AMENDMENTS**

### **Section 2510. General.**

A reference to Government Code § 12838.4 (added by Stats. 2005, Ch 10) was added to the authority section of the regulation. When definitions were added for purposes of clarity, existing language in 2510 was redesignated as subsection (b). The existing language itself was unchanged.

### **Section 2511. Notice of Parole.**

This section currently describes the contents of the notice of parole that prisoners and inmates receive prior to their release on parole. Due process of law under *Morrissey v. Brewer*, 408 U.S. 471 (1972) requires that persons going onto parole be given notice of the parole period and conditions of supervision. Subdivision (a) definitions was added per OAL's suggestion for purposes of clarity. Subdivisions (b) and (c) Notice and Failure to Sign were existing provisions. Subdivision (d) regarding reasonable accommodation provides basic information from the *Armstrong* and *Valdivia* court orders and repeats pertinent information concerning the grievance process already detailed in existing regulations, 15 CCR 2251.5, and concerning the CDC Form 1824 process already detailed in 15 CCR 3085.

These amendments translate the existing notice of parole into simple English thus ensuring that prisoners and parolees have adequate notice of their conditions of parole. This satisfies the equal access mandated by the federal courts in the *Armstrong* and *Valdivia* cases and provides due process of law required by the 14<sup>th</sup> Amendment to the United States Constitution. Additionally, some provisions were moved to § 2512. The Notice of Certificate of Rehabilitation has been removed as unnecessary for inclusion in the regulations. The Department uses a separate process to provide this notification to parolees. A reference to Government Code § 12838.4 (added by Stats. 2005, Ch 10) was added to the authority section of the regulation.

### **Section 2512. General Conditions of Parole.**

This section currently describes the general conditions of parole contained in the notice of parole that prisoners and inmates receive prior to their release on parole.

These amendments translate the notice of parole into simple English thus ensuring that prisoners and parolees have adequate notice of their conditions of parole. This satisfies equal access mandated by the federal courts in the *Armstrong* and *Valdivia* cases and provides due process of law. A reference to Government Code § 12838.4 (added by Stats. 2005, Ch 10) was added to the authority section of the regulation.

This section repeats existing regulations and law, including some provisions moved from existing section 2511, with minor revisions

Prior to the release of the revised CDCR 1515, *Samson v. California*, in which a parolee contested the validity of warrantless parole searches conducted without cause, was argued before

the United States Supreme Court. The Court held that Penal Code Section 3067(a)'s requirement that every prisoner eligible for release on state parole "shall agree in writing to be subject to search and seizure by a parole officer or other peace officer at any time of the day or night, with or without a search warrant and with or without cause" does not violate the Fourth Amendment.

As a result of this ruling, reviews of CDCR 1515 (12/05) determined that the language utilized, simple English, had not adequately noticed parolees that they were subject to suspicionless searches. As a result, additional language is now required to explain that search and seizure conditions applied pursuant to California Penal Code Section §3067 can be conducted without cause.

In addition, language was altered to clarify that parolees must have written permission to travel more than 50 miles from their homes.

### **Section 2513. Special Conditions of Parole.**

This section currently describes the special conditions of parole contained in the notice of parole. These amendments translate the notice of parole into simple English thus ensuring that prisoners and parolees have adequate notice of their conditions of parole. This satisfies equal access mandated by the federal courts in the *Armstrong* and *Valdivia* cases and provides due process of law. A reference to Government Code § 12838.4 (added by Stats. 2005, Ch 10) was added to the authority section of the regulation. This section repeats existing regulations and law. For purposes of clarity, subsection (a) of the new regulation breaks down the existing Special Conditions of Parole regulation into three types: special conditions of parole, mandatory special conditions of parole and additional special conditions of parole. The new section also repeats requirements from earlier in the article that violation of conditions of parole may result in revocation and return to prison. Subsection (b) provides for Special Conditions of Parole which are discretionary conditions that may typically be imposed based upon case factors. Subsection (c) provides for Mandatory Special Conditions of Parole which are conditions required by statute or court order where neither the parole agent nor the Board have discretion. Certain provisions of Jessica's Law place restrictions on where sex offenders may reside. Parolees will now be given notice of Penal Code Sections 3003(g) and 3003.5. Subsection (d) provides for Additional Special Conditions of Parole which may be imposed even if not typical or mandated so long as the reason is provided and it meets due process of law.

Subsection (e) provides clarification concerning use of existing appeals (15 CCR 3084 and 3085) and grievance (15 CCR 2251.5) mechanisms in relationship to special conditions of parole. Special Conditions or Mandatory Special Conditions are imposed by the Correctional Counselor prior to release or by the Parole Agent during parole supervision. These are explained to the prisoner/parolee by departmental staff and thus the prisoner/parolee would have personal notice that those could be appealed via the CDC appeals processes Form 602 or disability grievance process Form 1824. Additional Special Conditions which are imposed by BPH are explained personally by the Correctional Counsel prior to release, by the Parole Agent during parole supervision, by the Deputy Commissioner imposing the special condition at a hearing, or via written notice to the parolee from the BPH.

Specifically, subsection (b)(2) clarifies the special condition for Mentally Disordered Offender (MDO). It gives the parolee notice that MDO parolees may have imposed a special condition requiring they attend a DMH state hospital and a Conditional Release Program (CONREP) community outpatient mental health treatment pursuant to PC § 2962. The MDO process is already detailed in existing BPH regulations—15 CCR 2570-2580.